



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Daniel S. Sinclair, Jr.

DATE: October 23, 2003

SERIAL NO.: 10/083,671

GROUP ART UNIT: 1731

FILED: 26 February 2002

EXAMINER: Walls, Dionne A.

FOR: "Method of Making a Tobacco Product"

ATTORNEY DOCKET NO.: P02037US (98541.2P3)

* * * * *

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
BRIEF OF APPELLANT

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sirs:

On 20 February 2003 the Examiner finally rejected Claims 276-278, 288 and 306-328 of the above-referenced patent application. A Notice of Appeal was filed on 20 June 2003 and was received by the USPTO on 23 June 2003. This brief, required by 37 C.F.R. § 1.192(a), is due on 23 August 2003 (see 37 C.F.R. § 1.8(a)(2) and MPEP § 512 (Eighth Edition First Revision (E8R1) 02/2003)); it is in the form required by 37 C.F.R. § 1.192(c).

CERTIFICATE OF MAILING

I hereby certify that **the original and two copies** of this Appeal Brief are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 23rd day of October, 2003.

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02 FC:2252

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Seth M. Nehrbass, Reg. No. 31,281

(1) REAL PARTY IN INTEREST:

The real party in interest is the assignee, Blunt Wrap U.S.A., Inc.

(2) RELATED APPEALS AND INTERFERENCES:

There are no related appeals or interferences.

(3) STATUS OF CLAIMS:

Claims 1-275, 281-287, 289-298, 304, and 305 have been cancelled. Claims 276-280, 288, 299-303, and 306-338 are pending. Claims 279, 280, 299-303, and 329-338 are allowed. Claims 276-278 and 306-328 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Willis in view of Cartwright et al. Claim 288 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Bishop in view of Cartwright et al.

The rejection of Claims 276-278, 288, and 306-328 is being appealed.

(4) STATUS OF AMENDMENTS:

No amendments after final have been filed.

(5) SUMMARY OF INVENTION:

As suggested by MPEP § 1206, Applicant has read one of the appealed claims on the specification and drawings. This claim follows.

276. (twice amended) A tobacco product (see Figures 27-31), comprising:

(a) a sheet of tobacco-containing material that is flavored with a liquid additive that provides an elevated moisture content to the sheet of material (see, e.g., page 9, lines 31 and 32);

(b) a longitudinal bore defined when the sheet is formed into a hollow tube (143 - Figures 27-31);

(c) the longitudinal bore being not completely filled with a tobacco filler product (see, e.g., page 10, lines 34 and 35); and

(d) a package (170 or 175) of such dimensions to maintain the sheet in the formed hollow tube configuration until removed from the package to thereby enable a consumer to unroll the hollow tube and after removal from the package and then fill the bore with the user's selected tobacco material (see, e.g., page 11, lines 14-21); and

(e) wherein said elevated moisture content inhibits breaking of the tube when the tube is

unrolled by a consumer.

(6) ISSUES:

- (i) (There are no 35 U.S.C. § 112, first paragraph, rejections.)
- (ii) (There are no 35 U.S.C. § 112, second paragraph, rejections.)
- (iii) (There are no 35 U.S.C. § 102 rejections.)
- (iv) Are Claims 276-278 and 306-328 patentable under 35 U.S.C. § 103(a) over Willis and Cartwright et al.? Is Claim 288 patentable under 35 U.S.C. § 103(a) over Bishop and Cartwright et al.?

(7) GROUPING OF THE CLAIMS:

The rejected claims do not stand or fall together. Based on the references cited and arguments made by the Examiner, the claims are grouped together in particular combinations in part (8) for convenience. Applicant reserves the right to regroup the claims or to argue the patentability of each claim individually should new references be cited or new arguments or rejections be made.

(8) ARGUMENT:

- (i) (There are no 35 U.S.C. § 112, first paragraph, rejections.)
- (ii) (There are no 35 U.S.C. § 112, second paragraph, rejections.)
- (iii) (There are no 35 U.S.C. § 102 rejections.)
- (iv) Claims 276-278 and 306-328 are patentable under 35 U.S.C. § 103(a) over Willis and Cartwright et al. Claim 288 is patentable under 35 U.S.C. § 103(a) over Bishop and Cartwright et al.

Claims 276-278 and 306-328 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Willis in view of Cartwright et al. Applicant respectfully traverses this rejection.

Willis mentions around the first 6 lines of the right column that he gums the outer edges of the leaves and the ends joined on, which indicates that one could remove the product of Willis from packaging and then unwrap or unroll the product of Willis to add tobacco fill material. Thus, even in combination with Cartwright et al., it is respectfully submitted that Willis does not render these claims obvious.

Claim 288 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Bishop in view of Cartwright et al. Applicant respectfully traverses this rejection.

About the fifteenth line from the bottom in the left column, Bishop mentions that the edges of material are pasted together, which indicates that one could not unwrap or unroll the product of Bishop to

add tobacco fill material (rather, it appears that fill material is added without unrolling the wrapper of Bishop). Thus, even in combination with Cartwright et al., it is respectfully submitted that Bishop does not render this claim obvious.

CONCLUSION:

For the foregoing reasons, applicant respectfully submits that all claims remaining in the application are allowable. A Notice of Allowance is hereby respectfully requested.

TELEPHONE CONFERENCE INVITATION:

Should the Examiner or any member of the Board feel that a telephone conference would advance the prosecution of this application, he/she is encouraged to contact the undersigned at the telephone number listed below.

PETITION FOR EXTENSION OF TIME:

Applicant hereby petitions the Commissioner of Patents and Trademarks to extend the time for filing Appellant's Brief for 2 months from 23 August 2003 to 23 October 2003. The requisite fee of \$210 is attached hereto. Applicant hereby petitions the Commissioner under 37 C.F.R. § 1.136 for any additional extension of time necessary to render this Appeal Brief timely filed, and asks that the fee for any such extension be charged to Deposit Account No. 50-0694.

FEES:

A \$165 check for the fee required by 37 C.F.R. § 1.192(a) and § 1.17(f) is enclosed. Please charge any additional fees due or credit any overpayment to Deposit Account No. 50-0694.

Respectfully submitted,



Seth M. Nehrbass, Reg. No. 31,281
Charles C. Garvey, Jr., Reg. No. 27,889
Gregory C. Smith, Reg. No. 29,441
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(9) APPENDIX:

CLAIMS ON APPEAL:

276. (twice amended) A tobacco product, comprising:

- (a) a sheet of tobacco-containing material that is flavored with a liquid additive that provides an elevated moisture content to the sheet of material;
- (b) a longitudinal bore defined when the sheet is formed into a hollow tube;
- (c) the longitudinal bore being not completely filled with a tobacco filler product; and
- (d) a package of such dimensions to maintain the sheet in the formed hollow tube configuration until removed from the package to thereby enable a consumer to unroll the hollow tube and after removal from the package and then fill the bore with the user's selected tobacco material; and
- (e) wherein said elevated moisture content inhibits breaking of the tube when the tube is unrolled by a consumer.

277. (twice amended) The tobacco product of claim 276, wherein the bore is completely unfilled.

278. (amended) The tobacco product of claim 276, wherein the package has an opening between opposing walls which prevents the sheet from unrolling until removed from the package to insert tobacco fill material into the tube.

288. (twice amended) A shell for assembling custom-made rolls of tobacco for smoking, comprising:

- (a) a sheet of combustible material which has not been part of a previously assembled cigar or cigarette, and that has been flavored with a liquid additive that provides an elevated moisture content to the sheet of material;
- (b) said sheet of material having at least two edges and a surface area located between said edges;
- (c) said area having an inner surface and an outer surface;
- (d) wherein the sheet has a tubular shape at rest;
- (e) said edges being separable to provide access to the inner surface of the sheet of material for depositing thereon tobacco products to be smoked in the shell; and
- (f) wherein said elevated moisture content inhibits breaking of the tube when the tube is unrolled.

306. (Amended) A product including a cigar tube for holding an end user's tobacco fill material, comprising:

a) a cigar tube which comprises a sheet of material of tobacco leaves or homogenized tobacco paper flavored with a liquid additive that provides an elevated moisture content to the sheet of material, the sheet of material being rolled into a shaped tube that has a longitudinal bore, and edges that can be moved apart by the end user so that tobacco fill material can be added to the bore;

b) a wrapper, wherein the cigar tube is packaged in the wrapper, and the cigar tube remains rolled in said tube shape inside the wrapper, and the packaged cigar tube is not filled with tobacco to form a complete cigar; and

(c) wherein said elevated moisture content inhibits breaking of the shaped tube when the edges are moved apart by the end user.

307. The product of claim 306 further comprising moisture in the sheet of material.

308. The product of claim 306 wherein the sheet is entirely comprised of tobacco material.
309. The product of claim 306 wherein the wrapper is of cellophane material.
310. The product of claim 306 wherein the wrapper is of a clear material.
311. The product of claim 306 wherein the wrapped, shaped tube does not contain any tobacco fill material.
312. The product of claim 306 wherein the tube is not formed by removing the combustible filler of an existing prefabricated cigar.
313. The product of claim 306 wherein multiple layers define the sheet of material.
314. (amended) A product including a cigar tube for holding an end user's tobacco fill material, comprising:
 - a) a cigar tube which comprises a sheet of material of tobacco leaves or homogenized tobacco paper flavored with a liquid additive that provides an elevated moisture content to the sheet of material, the sheet of material being rolled into a shaped tube that has a longitudinal bore, and edges that can be moved apart by the end user so that tobacco fill material can be added to the bore;
 - b) a wrapper, wherein the cigar tube is packaged in the wrapper, and the cigar tube remains rolled in said tube shape inside the wrapper after packaging; and
 - (c) wherein said elevated moisture content inhibits breaking of the shaped tube when the edges are moved apart by the end user.
315. The product of claim 314 further comprising moisture in the sheet of material.
316. The product of claim 314 wherein the sheet is entirely comprised of tobacco material.
317. The product of claim 314 wherein the wrapper is of cellophane material.
318. The product of claim 314 wherein the wrapper is of a clear material.
319. The product of claim 314 wherein the wrapped, shaped tube does not contain any tobacco fill material.
320. The product of claim 314 wherein the tube is not formed by removing the combustible filler of an existing prefabricated cigar.
321. (Amended) A product including a cigar tube for holding an end user's tobacco fill material, comprising:
 - a) a cigar tube which comprises a sheet of material of tobacco leaves or homogenized tobacco paper that are flavored with a liquid additive that provides an elevated moisture content to the sheet of material, the sheet of material being rolled into a shaped tube that has a longitudinal bore, and edges that can be moved apart by the end user so that tobacco fill material can be added to the bore;
 - b) a wrapper, wherein the cigar tube is packaged in the wrapper, the wrapper has a clear portion for enabling a consumer to see the cigar tube, and the cigar tube remains rolled in said tube shape inside the wrapper; and
 - (c) wherein said elevated moisture content inhibits breaking of the shaped tube when the edges are moved apart by the end user.
322. The product of claim 321 further comprising moisture in the sheet of material.
323. The product of claim 321 wherein the sheet is entirely comprised of tobacco material.
324. The product of claim 321 wherein the wrapper is of cellophane material.
325. The product of claim 321 wherein the wrapper is of a clear material.

326. The product of claim 321 wherein the wrapped, shaped tube does not contain any tobacco fill material.

327. The product of claim 321 wherein the tube is not formed by removing the combustible filler of an existing prefabricated cigar.

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- (c) the longitudinal bore being not completely filled with a tobacco filler product; and
- (d) a package of such dimensions to maintain the sheet in the formed hollow tube configuration until removed from the package to thereby enable a consumer to unroll the hollow tube and after removal from the package and then fill the bore with the user's selected tobacco material; and
- (e) wherein said elevated moisture content inhibits breaking of the tube when the tube is unrolled by a consumer.

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- (b) said sheet of material having at least two edges and a surface area located between said edges;
- (c) said area having an inner surface and an outer surface;
- (d) wherein the sheet has a tubular shape at rest;
- (e) said edges being separable to provide access to the inner surface of the sheet of material for depositing thereon tobacco products to be smoked in the shell; and
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306. (Amended) A product including a cigar tube for holding an end user's tobacco fill material, comprising:

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- b) a wrapper, wherein the cigar tube is packaged in the wrapper, and the cigar tube remains rolled in said tube shape inside the wrapper, and the packaged cigar tube is not filled with tobacco to form a complete cigar; and
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- 308. The product of claim 306 wherein the sheet is entirely comprised of tobacco material.
- 309. The product of claim 306 wherein the wrapper is of cellophane material.
- 310. The product of claim 306 wherein the wrapper is of a clear material.
- 311. The product of claim 306 wherein the wrapped, shaped tube does not contain any tobacco fill material.
- 312. The product of claim 306 wherein the tube is not formed by removing the combustible filler of an existing prefabricated cigar.
- 313. The product of claim 306 wherein multiple layers define the sheet of material.
- 314. (amended) A product including a cigar tube for holding an end user's tobacco fill material, comprising:
 - a) a cigar tube which comprises a sheet of material of tobacco leaves or homogenized tobacco paper flavored with a liquid additive that provides an elevated moisture content to the sheet of material, the sheet of material being rolled into a shaped tube that has a longitudinal bore, and edges that can be moved apart by the end user so that tobacco fill material can be added to the bore;
 - b) a wrapper, wherein the cigar tube is packaged in the wrapper, and the cigar tube remains rolled in said tube shape inside the wrapper after packaging; and
 - (c) wherein said elevated moisture content inhibits breaking of the shaped tube when the edges are moved apart by the end user.
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- 316. The product of claim 314 wherein the sheet is entirely comprised of tobacco material.
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